

Notice of Allowability

Application No.

10/763,545

Examiner

Bo Peng

Applicant(s)

OLSON ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/30/06.
2. ☒ The allowed claim(s) is/are 109-143.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

1. Applicant's amendment, filed on October 30, 2006, is acknowledged. Claims 1-108 were canceled. Claim 110 is amended. New claims 141-143 are added. Claims 109-143 are pending and considered in this Office action.
2. Rejection of Claim 110 under 35 U. S. C. 112, second paragraph, is **withdrawn** in view of the amendment to the claim.
3. Rejection of Claims 109-140 under 35 U.S.C. 112, first paragraph, as failing to comply with the rule of biological material deposit, is **withdrawn** in view of the Attorney's statement in the Remarks filed on October 30, 2006, stating that subject to 37 C.F.R. §808(b), all restrictions on the availability to the public of ATCC No. HB-12610 will be irrevocably removed upon issuance of a U.S. Patent from the subject application and the PA14 deposit will be replenished if necessary during the term of such patent.
4. The rejection of Claims 109-126 on the ground of nonstatutory obviousness-type double patenting, as being unpatentable over claims 1-5, 18, 31 and 74 of copending Application No. 10/371,483, is **withdrawn** in view of an approval of the terminal disclaimer.
5. The rejection of Claims 127-140 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 and 19-21 of U.S. Patent No. 7,060,273, is **withdrawn** in view of an approval of the terminal disclaimer.

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6. The following is an examiner's statement of reasons for allowance:
7. Claims 109-143 are free of the prior art of the record. The Examiner is not aware of any suggestion in the prior art of the record that would point the artisan to the claimed CCR5 antibody PA14 and hybridoma cell line PA14. Since the composition is allowable, the method of using the composition is also allowable. Moreover, the method of treating a subject infected with HIV-1 using the claimed CCR5 antibody PA14 were found allowable and issued a patent (US 7,060,273). Accordingly, claims 109-143 are allowed.

EXAMINER'S AMENDMENT

8. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
9. Authorization for this Examiner's Amendment was given in a telephone interview with Attorney John White on December 14, 2006.
10. Amend claim 138:

Claim 138. The method of claim 127, wherein the dose is administered by a route selected from the group consisting of oral, rectal, intra-vaginal, topical, ~~topie~~, nasal, ophthalmic and parenteral routes of administration.
11. It is noted that Claims 118, 119, 121, 122, 134 and 135 should be indicated as "previously presented", not "currently amended".

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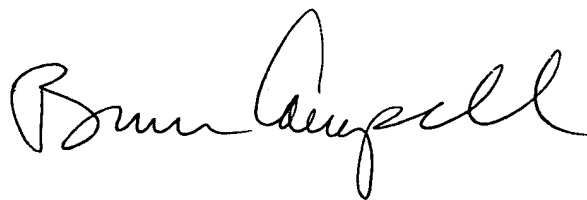
12. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bo Peng, Ph.D. whose telephone number is 571-272-5542. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, Ph.D. can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

BP
Bo Peng, Ph.D.
12/14/06



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